



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

#### [EPA-R01-OAR-2019-0179; FRL-9999-13-Region 1]

#### **Air Plan Approval; New Hampshire; Reasonably Available Control Technology Orders**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of New Hampshire. These revisions consist of single source Orders that New Hampshire adopted to meet reasonably available control technology (RACT) requirements, and requests made by New Hampshire to withdraw from its SIP a number of previously issued RACT Orders. This action is being taken under the Clean Air Act.

**DATES:** This rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No.

EPA-R01-OAR-2019-0179. All documents in the docket are listed on the

<https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at

<https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square - Suite 100, Boston, MA.

EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER**

**INFORMATION CONTACT** section to schedule your inspection. The Regional Office's

official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Bob McConnell, Environmental Engineer, Air and Radiation Division (Mail Code 05-2), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109-3912; (617) 918-1046.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

## **Table of Contents**

- I. Background and Purpose
- II. Response to Comments
- III. Final Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

## **I. Background and Purpose**

On July 12, 2019 (84 FR 33198), EPA published a Notice of Proposed Rulemaking (NPRM) for the State of New Hampshire. The NPRM proposed approval of the following items into the New Hampshire SIP: a single source NO<sub>x</sub> RACT Order for Schiller Station; a revised single source NO<sub>x</sub> RACT Order for Anheuser Busch; a revised single source VOC RACT Order for Metal Works Incorporated; a revised single source VOC RACT Order for Polyonics, Inc., and; a single source VOC RACT Order for Complete Coverage Woodpriming, LLC. EPA also proposed to withdraw from the New Hampshire SIP previously approved RACT Orders for the L.W. Packard Company, the Groveton Paperboard Company, the Hampshire Chemical Company, the Waterville Valley Ski Resort, and the Concord Litho Group, Incorporated. We note that although our NPRM mentioned that New Hampshire’s September 5, 2018 submittal

request included a request to withdraw from the SIP two RACT orders previously issued to the Public Service Company of New Hampshire (PSNH), our NPRM did not propose action on that request. We will take action on the State's request regarding withdrawal of the RACT orders for PSNH in a future rulemaking. Other specific requirements of the State's submittals and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. We received one set of comments on the NPRM, which we have summarized and responded to in section II below.

## **II. Response to Comments**

We received one comment letter containing three comments on the NPRM. A summary of the comments, and our responses, follows.

*Comment 1: The RACT Order for the Metal Works facility should not be approved because, by definition, RACT is the lowest achievable emission limit capable of being met by application of technological and economical control technology. Purchasing of emission reduction credits is not an emission limit and thus cannot be approved as RACT. EPA has no precedent that allows this and directly goes against settled case law. RACT must be an emission limit, and that limit must be met with technologically and economically feasible control equipment.*

Response: Contrary to the commenter's assertion, EPA has long held that compliance with RACT can be achieved via the purchase of emission reduction credits (ERCs), and so does not need to be met exclusively by the establishment of emission limits applicable to all RACT-subject sources. In 1986, EPA issued its Emission Trading Policy Statement (ETPS). *See* 51 FR 43814; December 4, 1986. Subsequently, on April 7, 1994, pursuant to Section 182(g)(4)(B) of the Clean Air Act, EPA promulgated its Economic Incentive Program (EIP) Rules (*see* 59 FR 16690; April 7, 1994), and updated the EIP in 2001.<sup>1</sup> The ETPS and the EIP

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<sup>1</sup> Improving Air Quality with Economic Incentive Programs; EPA-452/R-01-001; January, 2001.

rules contain guidelines for the generation and use of ERCs. In New Hampshire's case, although the state has adopted an emission credit trading rule, Env-A 3100, Discrete Emission Reduction Trading Program, we have not approved that rule into the New Hampshire SIP. Therefore, we evaluate the generation and use of ERCs for RACT compliance in New Hampshire on a case by case basis. See, for example, our final rule for New Hampshire from November 5, 2012 (77 FR 66391). In this particular case, we agree with New Hampshire's determination that the ERCs to be used by the Metal Works facility meet the key aspects of the ETPS and EIP rules, namely that they are surplus, enforceable, permanent, and quantifiable, and therefore are appropriate for use in trading to meet RACT requirements.

*Comment 2: For Polyonics, EPA is proposing to establish the sale of emission reduction credits as representing RACT, but the sale of emission credits cannot possibly represent the application of technological and economically feasible control technology. The same emission limit that applied before the order was amended should "continue to represent RACT"*

Response: The commenter misinterprets our proposed action with regard to the Polyonics facility. The same emission limits within the pre-existing RACT order do continue to apply to the facility. The amendment to the Order just added the capability for the source to generate ERCs.

Comment 3: *For L.W. Packard, Groveton Paperboard, Hampshire Chemical Corp, and Concord Litho Group, EPA states that these facilities "ceased operations" as of various dates in the past. EPA must only allow removal of these orders if the state has fully rescinded their operating permits and the facilities are unable to be reactivated under their current Title V operating permit.*

Response: The Hampshire Chemical Corporation closed and surrendered its operating permit in 2004; the L.W. Packard Company and Groveton Paperboard both closed and surrendered their

operating permits in 2008. On October 29, 2018, the Concord Litho Group requested that New Hampshire terminate its operating permit because it had ceased printing operations, which had been the subject of its operating permit requirements, and New Hampshire complied with that request. We note that our NPRM incorrectly indicated the facility had closed; other operations at the facility remain in existence, but due to their minimal emissions do not require issuance of a state operating permit or RACT order from the State.

### **III. Final Action**

EPA is approving the following RACT orders and RACT order withdrawals as revisions to the New Hampshire SIP: a single source NO<sub>x</sub> RACT Order for Schiller Station; a revised single source NO<sub>x</sub> RACT Order for Anheuser Busch; a revised single source VOC RACT Order for Metal Works Incorporated; a revised single source VOC RACT Order for Polyonics, Inc., and a single source VOC RACT Order for Complete Coverage Woodpriming, LLC. We are also withdrawing from the New Hampshire SIP previously approved RACT Orders for the L.W. Packard Company, the Groveton Paperboard Company, the Hampshire Chemical Company, the Waterville Valley Ski Resort, and the Concord Litho Group, Incorporated.

### **IV. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the following RACT Orders issued by New Hampshire: NO<sub>x</sub> RACT Order RO-003 for Schiller Station; NO<sub>x</sub> RACT Order ARD-05-001 for Anheuser Busch; VOC RACT Order ARD-05-001 for Metal Works Incorporated; VOC RACT Order ARD 07-004 for Polyonics, Inc., and; VOC RACT Order RO-0004 for Complete Coverage Wood Priming, LLC. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person

identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>2</sup>

## **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

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<sup>2</sup> 62 FR 27968 (May 22, 1997).

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 28, 2019.

Deborah Szaro,  
Acting Regional Administrator,  
EPA Region 1.



Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## **PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 et seq.

### **Subpart EE – New Hampshire**

2. Section 52.1520(d) is amended by:

- a. Removing the entries for “Source specific NO<sub>x</sub> RACT order for Groveton Paperboard Corp., Groveton, NH”; “Source specific NO<sub>x</sub> RACT order for Waterville Valley Ski Area Ltd., Waterville Valley, NH”; “VOC RACT for L.W. Packard and Company, Inc. Ashland, NH”; “Source specific NO<sub>x</sub> RACT order for Hampshire Chemical Corporation, Nashua, NH”; “Concord Litho Group – Permit No. ARD -07-003”; “Metal Works”; “Polyonics”; “Anheuser Busch”; “PSNH, Schiller Station”; and “Concord Litho Group – Permit No. ARD-07-003A”; and
- b. Adding entries for “Schiller Station”; “Anheuser Busch”; “Metal Works”; “Polyonics”; and “Complete Coverage Woodpriming” in numerical order.

The additions read as follows:

#### **§ 52.1520 Identification of plan.**

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(d) \* \* \*

#### **EPA-Approved New Hampshire Source Specific Requirements**

<b>Name of source</b>	<b>Permit No.</b>	<b>State effective date</b>	<b>EPA approval date <sup>2</sup></b>	<b>Additional explanations/§52.1535 citation</b>
**	*	*	*	**

Schiller Station	NOx RACT Order RO-003	9/6/2018	[Insert date of publication in the <u>Federal Register</u> ]  [Insert <u>Federal Register</u> citation]	Order contains NOx emission limits for emission units SR4 and SR6.
Anheuser Busch	NOx RACT Order ARD-05-001	1/17/2018	[Insert date of publication in the <u>Federal Register</u> ]  [Insert <u>Federal Register</u> citation]	Revisions made to testing requirements for two boilers.
Metal Works	VOC RACT Order ARD-05-001	8/16/2018	[Insert date of publication in the <u>Federal Register</u> ]  [Insert <u>Federal Register</u> citation]	Order allows for compliance via purchase of emission reduction credits.
Polyonics	VOC RACT Order ARD07-004	8/28/2018	[Insert date of publication in the <u>Federal Register</u> ]  [Insert <u>Federal Register</u> citation]	Order allows facility to generate emission reduction credits.
Complete Coverage Woodpriming	VOC RACT Order RO-0004	3/14/2019	[Insert date of publication in the <u>Federal Register</u> ]  [Insert <u>Federal Register</u> citation]	Order provides a VOC content limit for stain blocker used by the facility.
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<sup>2</sup> In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

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#### § 52.1525 [Amended]

3. In § 52.1525, amend the table by removing the entries with the following State citation chapter:

“Order ARD-94-001”; “Order ARD-95-001”; “Order ARD-95-003”; “Order ARD-95-011”; and  
“Order ARD-00-001”.